

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THOMAS MATISON and KAREN
MATISON,

Plaintiffs,

v.

JOEL PEARCE, et al.,

Defendants.

CASE NO. C16-5431 BHS

ORDER DENYING
DEFENDANT'S MOTION TO
DISMISS PURSUANT TO FED. R.
CIV. P. 12(b)(2)

This matter comes before the Court on Defendant Joel Pearce's ("Pearce") motion to dismiss for lack of personal jurisdiction. Dkt. 13. The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and denies the motion because (1) Pearce's status as a corporate officer does not somehow insulate him from personal jurisdiction arising from his alleged tortious actions aimed at Washington State residents; and (2) Plaintiffs Thomas and Karen Matison have alleged actions by Pearce that sufficiently demonstrate the Court's personal jurisdiction over him.

I. PROCEDURAL AND FACTUAL BACKGROUND

On May 11, 2016, Plaintiffs filed a complaint in Pierce County Superior Court against Defendants Rockwest, Inc. ("Rockwest"), Pearce, and Turnbull and Born, P.L.L.C., seeking to quiet title, obtain declaratory relief that collection on a promissory

1 note is time-barred, that a deed of trust is void, and that the substitution of trustee to the
 2 deed of trust is void. Dkt. 3. Plaintiffs also seek damages in a tort claim against
 3 Rockwest and Pearce under Washington’s Consumer Protection Act (“CPA”), RCW
 4 Chapter 19.86, for alleged violations of the Washington Collection Agency Act
 5 (“WCAA”), RCW Chapter 19.16. *Id.*

6 On June 3, 2016, Rockwest and Pearce removed to this Court asserting jurisdiction
 7 pursuant to 28 U.S.C. § 1332. Dkt. 1. On June 10, 2016, Rockwest filed a timely
 8 answer. Dkt. 9; *see* Fed. R. Civ. P. 81(c).

9 On July 18, 2016, Pearce filed his motion to dismiss for lack of personal
 10 jurisdiction, presently before the Court. Dkts. 13, 14. On August 5, 2016, Plaintiffs
 11 responded. Dkts. 15, 16, 17. On August 12, 2016, Pearce replied. Dkt. 20.

12 II. DISCUSSION

13 Pearce moves to dismiss Plaintiffs’ claim against him for lack of personal
 14 jurisdiction.¹ Dkt. 13 at 1. Pursuant to Fed. R. Civ. P. 12(b)(2), a party may assert the
 15 defense of lack of personal jurisdiction by filing a pre-answer motion.

16 Personal jurisdiction refers to the Court’s power to render a valid and enforceable
 17 judgment on a particular defendant. *World-Wide Volkswagen Corp. v. Woodson*, 444
 18 U.S. 286, 291 (1980). This power is limited by the Due Process Clause of the Fourteenth

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 20 ¹ Pearce’s motion to dismiss initially states that it is brought pursuant to “Civil Rule
 21 12(b)(6).” Dkt. 13 at 1. Later, in its actual argument, it references “CR 12(b)(2)” in setting forth
 22 a legal standard relevant to motions to dismiss for lack of personal jurisdiction. Dkt. 13 at 4.
 Because the substance of Pearce’s motion argues for dismissal based solely on a theory that the
 Court lacks personal jurisdiction, the Court will treat Pearce’s motion as a motion to dismiss
 under Fed. R. Civ. P. 12(b)(2).

1 Amendment, which requires that out-of-state defendants have sufficient “minimum
2 contacts” with the forum state such that requiring the defendant to litigate in that forum
3 would comport with “traditional notions of fair play and substantial justice.” *Int’l Shoe*
4 *Co. v. Washington*, 326 U.S. 310, 316 (1945).

5 “Where a defendant moves to dismiss a complaint for lack of personal jurisdiction,
6 the plaintiff bears the burden of demonstrating that jurisdiction is appropriate.”
7 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). When a
8 court rules on the motion based on affidavits and discovery materials rather than an
9 evidentiary hearing, the plaintiff need only make a *prima facie* showing of personal
10 jurisdiction. *See Ochoa v. J.B. Martin & Sons Farms, Inc.*, 287 F.3d 1182, 1187 (9th Cir.
11 2002). “Although the plaintiff cannot simply rest on the bare allegations of its complaint,
12 uncontroverted allegations in the complaint must be taken as true.” *Schwarzenegger*, 374
13 F.3d at 800 (internal quotation marks and citations omitted). “Additionally, any
14 evidentiary materials submitted on the motion are construed in the light most favorable to
15 the plaintiffs and all doubts are resolved in their favor.” *Ochoa*, 287 F.3d at 1187
16 (internal quotation marks omitted).

17 Pearce’s motion to dismiss is premised on the argument that his corporate role
18 immunizes him from personal jurisdiction for the actions he takes on behalf of his
19 corporation. The Court rejects this argument because (A) Pearce’s corporate role does
20 not shorten the reach of Washington’s long-arm statute and (B) Plaintiffs have alleged
21 actions by Pearce sufficient to establish the necessary “minimum contacts” with
22 Washington State.

1 **A. Fiduciary Shield Doctrine**

2 Pearce's argument implicates the "fiduciary shield doctrine." Although he does
3 not expressly reference this doctrine in his briefing, it is the sum of his jurisdictional
4 argument: particularly, that personal jurisdiction is deficient because "Plaintiff's
5 allegations against Pearce are premised exclusively on his role as a corporate officer of
6 Rockwest." Dkt. 13 at 4.

7 "Under the fiduciary shield doctrine, a person's mere association with a
8 corporation that causes injury in the forum state is not sufficient in itself to permit that
9 forum to assert jurisdiction over the person." *Davis v. Metro Prods., Inc.*, 885 F.2d 515,
10 520 (9th Cir. 1989). However, in applying the Supreme Court's precedent from *Calder v.*
11 *Jones*, 465 U.S. 783 (1984), and *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984),
12 the Ninth Circuit in *Davis* recognized that the Supreme Court "did not consider the
13 existence of a state-created corporate form to create a due process limit on jurisdiction."
14 *Davis*, 885 F.2d at 521. Under this guiding principle, the Ninth Circuit largely
15 abandoned the fiduciary shield doctrine, determining that a forum's "long-arm statute
16 may, consistent with constitutional due process, allow assertion of personal jurisdiction
17 over officers of a corporation as long as the court finds those officers to have sufficient
18 minimum contacts with [the forum]." *Davis*, 885 F.2d at 522.

Although various courts approach the fiduciary shield doctrine inconsistently,² this Court is bound by the decision of the Ninth Circuit in *Davis*. Accordingly, the fiduciary shield doctrine is of no consequence where the applicable long-arm statute extends to the full extent authorized by the Due Process Clause. *Davis*, 885 F.2d at 522 (construing Arizona long-arm statute coextensive with due process requirements to establish personal jurisdiction despite defendant's assertion of fiduciary protections). *See also Brink v. First Credit Res.*, 57 F. Supp. 2d 848, 859 (D. Ariz. 1999) ("If the state's long-arm statute allows jurisdiction to the extent allowed by the Constitution, then employing the fiduciary shield to insulate employees is inconsistent with the wide reach of the statute."); *Kukui Gardens Corp. v. Holco Capital Grp., Inc.*, 664 F. Supp. 2d 1103, 1110 (D. Haw. 2008) ("[I]t is unclear whether the doctrine continues to be a viable defense to personal jurisdiction. Instead, the proper inquiry is to look specifically at the minimum contacts of the individual regardless of whether that individual was acting within his or her official capacity."); 3A William Fletcher, *Fletcher Cyclopedic of the Law of Private Corporations* § 1296.20 (2015) ("The fiduciary shield doctrine is not available where the forum state's long-arm statute is coextensive with the full reach of due process.").

Because Washington's long-arm statute is coextensive with due process requirements, *Shute v. Carnival Cruise Lines*, 113 Wn. 2d 763, 766–67 (1989), Pearce's

² *See, e.g., Giusto v. Ashland Chemical Co.*, 994 F. Supp. 587 (E.D. Pa. 1998); *TriStrata Technology, Inc. v. Neoteric Cosmetics, Inc.*, 961 F. Supp. 686 (D. Del. 1997); *Glass v. Kemper Corp.*, 930 F. Supp. 332 (N.D. Ill. 1996). *But see Kukui Gardens Corp. v. Holco Capital Grp., Inc.*, 664 F. Supp. 2d 1103 (D. Haw. 2008); *Brink v. First Credit Res.*, 57 F. Supp. 2d 848, 859 (D. Ariz. 1999); *Nassar v. Florida Fleet Sales Inc.*, 69 F. Supp. 2d 443 (S.D.N.Y. 1999); *Davis*, 885 F.2d 515.

1 role as a corporate officer does not prevent the Court from exercising personal
2 jurisdiction over him.

3 **B. “Minimum Contacts” Analysis**

4 Instead of examining Pearce’s corporate role in determining whether personal
5 jurisdiction exists, the proper inquiry before the Court is whether Pearce’s alleged actions
6 satisfy a “typical minimum contacts analysis.” *Kukui Gardens*, 664 F. Supp. 2d at 1111.
7 The Ninth Circuit applies a three-part test to determine whether due process is satisfied
8 by exercising personal jurisdiction over an out-of-state defendant based on his contacts
9 with the forum:

10 (1) The non-resident defendant must purposefully direct his
11 activities or consummate some transaction with the forum or resident
12 thereof; or perform some act by which he purposefully avails himself of the
13 privilege of conducting activities in the forum, thereby invoking the
14 benefits and protections of its laws;

15 (2) the claim must be one which arises out of or relates to the
16 defendant's forum-related activities; and

17 (3) the exercise of jurisdiction must comport with fair play and
18 substantial justice, i.e. it must be reasonable.

19 *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1205–06
20 (9th Cir. 2006). Under this minimum contacts analysis, the plaintiff bears the burden of
21 establishing the first two prongs. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d
22 1066, 1076 (9th Cir. 2011). The burden then shifts to the defendant “to set forth a
‘compelling case’ that the exercise of jurisdiction would not be reasonable.” *Id.*

1 **1. Purposeful direction**

2 When determining whether a defendant has purposefully directed activities toward
 3 a forum state, the Ninth Circuit employs the “*Calder-effects test*.”³ *Mavrix Photo, Inc. v.*
 4 *Brand Techs., Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011). This test “requires that ‘the
 5 defendant allegedly must have (1) committed an intentional act, (2) expressly aimed at
 6 the forum state, (3) causing harm that the defendant knows is likely to be suffered in the
 7 forum state.’” *Id.* at 1228 (quoting *Brayton Purcell LLP v. Recordon & Recordon*, 606
 8 F.3d 1124, 1128 (9th Cir. 2010)).

9 Plaintiffs’ factual allegations satisfy this test. They allege that Pearce contacted
 10 them at their Washington home in December 2005 and began collecting payments on an
 11 allegedly fraudulent promissory note. Dkt. 1-1 at 5–6. They further allege Pearce,
 12 without a required license, telephoned in May 2014 and left a message, seeking to collect
 13 on the loan and threatening foreclosure absent payment. Dkt. 1-1 at 7, 12. The *Calder-*
 14 *effects test* is satisfied by such alleged wrongful attempts at debt collection. *See, e.g.,*
 15 *Weakley v. Redline Recovery Servs., LLC*, 723 F. Supp. 2d 1341, 1344 (S.D. Cal. 2010),

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 17 ³ Citing *Hollande Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 460 (9th Cir.
 18 2007), Pearce argues that the *Calder-effects test* applies only to “intentional torts,” not actions
 19 brought pursuant to a statute. Dkt. 20 at 2. This misapplies the Ninth Circuit’s analysis in
 20 *Hollande*. Referring to the *Calder* decision, the Ninth Circuit in *Hollande* used the term
 21 “intentional tort” to describe any tortious actions intentionally targeting a forum. 485 F.3d at
 22 460. It contrasted such “intentional torts” with tortious acts which do not involve the active and
 intentional targeting of a forum state, such as negligently placing a faulty product into the stream
 of commerce. *Id.* Such an analysis does not limit the *Calder-effects test* to wrongful acts like
 assault, battery, conversion, etc., defined in law school textbooks as “intentional torts.” As set
 forth in the *Calder* decision, the Court’s analysis therein applies wherever a defendant engages in
 “intentional, and allegedly tortious, actions . . . expressly aimed at [the forum],” as opposed to
 “mere untargeted negligence.” *Calder*, 465 U.S. at 789.

clarified on denial of reconsideration, No. 09-CV-1423 BEN, 2010 WL 3033801 (S.D. Cal. Aug. 2, 2010) (“Because individual Defendants . . . contacted Plaintiff . . . in California, by telephone to collect Plaintiff’s alleged debt, Defendants have performed acts or transactions within the forum.”). Such alleged actions are clearly both intentional and aimed at Washington residents. Additionally, Plaintiffs claim to have suffered resulting harm occurring within the forum state. Dkt. 1-1 at 6–8, 13.

The facts outlined in the complaint adequately allege that Pearce, while acting on behalf of Rockwest, was instrumental in establishing, directing, and/or ratifying these debt collection practices. Pearce’s repeated assertions that he “is merely the sole shareholder and president of Rockwest,” is of no consequence in the face of such allegations. Dkt. 13 at 2. *See State v. Ralph Williams’ N. W. Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 322 (1976) (Under the CPA, “[i]f a corporate officer participates in the wrongful conduct, or with knowledge approves of the conduct, then the officer, as well as the corporation, is liable for the penalties. Corporate officers cannot use the corporate form to shield themselves from individual liability.”).

2. Claims arising from Pearce’s forum related activities

The second prong of the minimum contacts analysis demands that “the claim must be one which arises out of or relates to the defendant’s forum-related activities.” *Yahoo!*, 433 F.3d at 1206. As stated above, Plaintiffs’ claim against Pearce arises from their allegations that Pearce engaged in unlawful debt collection practices aimed at Washington State. Specifically, Plaintiffs bring a claim under the CPA for alleged violations of the WCAA. Dkt. 1-1 at 10–13. Because Plaintiffs’ claim against Pearce is

1 premised on Pearce's debt collection activities aimed at Washington State, it properly
2 arises from his forum related activities.

3 **3. Reasonableness**

4 After a plaintiff satisfies the first two prongs of the minimum contacts analysis, the
5 burden falls upon the defendant "to set forth a 'compelling case' that the exercise of
6 jurisdiction would not be reasonable." *CollegeSource*, 653 F.3d at 1076. Pearce once
7 again relies on his corporate position, arguing that the Court's exercise of personal
8 jurisdiction would be unreasonable because his contacts with the forum were based on his
9 role as Rockwest's officer and agent. Dkt. 20 at 5–6. For the reasons expressed above,
10 the Court rejects this argument.

11 Pearce also contends that subjecting him to litigation in Washington is
12 unreasonable where his corporation, Rockwest, is vicariously liable for his actions. Dkt.
13 20 at 5–6. Although Pearce contends that this means Plaintiffs will receive "no marginal
14 substantive benefit" from his inclusion, Dkt. 20 at 6, the Court finds otherwise. Plaintiffs
15 cannot recover from Pearce on a judgment solely against Rockwest. If Rockwest lacks
16 assets to compensate Plaintiffs for any damages sustained by Pearce's and Rockwest's
17 alleged violation of the CPA, a dismissal would effectively allow Pearce to shield himself
18 from personal liability for his tortious conduct. *See Ralph Williams*, 87 Wn.2d at 322
19 ("Corporate officers cannot use the corporate form to shield themselves from individual
20 liability."). The purpose of vicarious liability is to protect the injured by imputing tort
21 liability to the principal of the agent, not to allow an agent to escape responsibility for his
22 own tortious acts. *Johnson v. Harrigan-Peach Land Dev. Co.*, 79 Wn.2d 745, 753 (1971)

1 (“An officer of a corporation, consequently, is liable for a tort committed in the course
2 and within the scope of his official duties to the corporation the same as any other agent
3 or servant is liable for his torts, for an agent is not exonerated from the consequences of
4 his torts by the facts that, in committing them, he acted for his principal.”).

5 Most importantly, Pearce has failed to address any of the seven reasonableness
6 factors set forth in *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1021 (9th
7 Cir. 2002). Lacking any other argument,⁴ Pearce has failed to articulate a basis whereby
8 the Court might consider the exercise of personal jurisdiction to be unreasonable.

9 Therefore, the Court finds that the third prong of the minimum contacts analysis has been
10 satisfied. While Plaintiffs’ allegations that Pearce is liable for violating the CPA remain
11 unproven, they are more than adequate to establish a *prima facie* showing of personal
12 jurisdiction.

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20 ⁴ In his reply, Pearce does allude to the definition of “collection agency” under RCW
21 19.16.100(5)(6) of the WCAA, suggesting that his role as an agent might preclude *personal*
22 *liability* for Plaintiffs’ CPA claim. Dkt. 20 at 5. Such an argument is relevant to a motion to
dismiss pursuant to Fed. R. Civ. Pro. 12(b)(6) for failure to state a claim. The Court will not
consider it in assessing *personal jurisdiction* on a Fed. R. Civ. P. 12(b)(2) motion, particularly
when raised only in passing by the moving party’s reply.

III. ORDER

Therefore, it is hereby **ORDERED** that Pearce's motion to dismiss (Dkt. 13) is **DENIED**.

Dated this 23rd day of August, 2016.



BENJAMIN H. SETTLE
United States District Judge